IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Lala @ Rahees Vs. State of Rajasthan
(D.B.Criminal Appeal No.1251/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 21-8-2002 in Sessions Case No.199/2001 passed by Sh. Prakash Chand Sharma, RHJS, Additional Sessions Judge (Fast Track) No.2, Bharatpur.

Date of Judgment: September 03, 2007.

PRESENT
HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Biri Singh Sinsinwar] for the appellant.
Mr. Kamlendra Sihag]

Mr. B.N.Sandhu, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

The appellant, a wholesale vendor of vegetables, was indicted before the learned Additional Sessions Judge, (Fast Track) No.2, Bharatpur, for having committed murder of his driver, who on the fateful day came from Bayana after supplying tomatoes and wanted to settle accounts. Learned Judge vide judgment dated August 21, 2002 convicted and sentenced the appellant as under:-

U/s.302 IPC:
To suffer imprisonment for life and fine of Rs.500/-, in default to further suffer simple imprisonment for three months.

U/s.3/25 Arms Act:
To suffer simple imprisonment for one year and fine of

Rs.500/-, in default to further suffer simple imprisonment for three months.

Substantive sentences were ordered to run concurrently.

2. The prosecution case is as follows:-

On September 10, 2001 around 1.45 PM after receiving information about incident of firing while Sub Inspector Police Station Kotwali Bharatpur reached to New Sabzi Mandi Kumher Road, informant Bablu (Pw.1) handed over a written report (Ex.P-1) to him. It was inter alia stated in the report that on the said day at about 12.30 PM when Balla (since deceased) went to the shop of Lala @ Rahees (appellant) for requesting him to repay the loan, Lala opened fire at Balla that hit his chest. Balla fell down in front of the shop of Ram Niwas and died. On that report case under sections 302/34 IPC and 3/25 Arms Act was registered and investigation commenced. Autopsy on the dead body was performed, necessary memos were drawn, statements of witnesses were recorded, accused were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.2 Bharatpur. Charges under sections 302 IPC and 3/25 Arms were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 22 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence and stated that he himself removed the dead body to hospital. Two witnesses in support of defence were examined. Learned trial Judge on hearing final submissions, while acquitting co-accused Kalua, convicted and sentenced the appellant as indicated above.

3. Death of Balla was undeniably homicidal in nature. A look at

Post Mortem Report (Ex.P-17) reveals that following ante mortem injuries were found on the dead body:-

1. Abrasion 4 x 1cm on Lt. forehead mid part red in colour.
2. Abrasion 3 x 2cm, red in colour just below and lateral to left eye.
3. Abrasion 1½cm x ½cm at bridge of nose, red in colour.
4. Abrasion 3cm x 2cm, red in colour, placed on Lt. knee joint lower anteriorly.
5. Punctured lacerated wound 1½ x 1cm x chest cavity deep over mid sternal area, collor of abrasion present. No blackening, no tattooing, margin inverted suggestive of wound of entry caused by fire arm.

The cause of death was hemorrhagic shock as a result of injury to heart. According to Dr.Ashok Mathur (Pw.18), who performed autopsy on the dead body the injuries were sufficient in the ordinary course of nature to cause death.

4. The super structure of prosecution case is founded on the testimony of informant Bablu (Pw.1) who in his deposition stated that before going to the shop of Lala, his brother Balla came to him and from his shop he went to the shop of Lala to settle the account. After about 15 minutes he heard the cries of Balla. He along with Murari, Fateh Chand, Gopal, Virendra and Neetu rushed to the shop of Lala. As soon as he reached he saw Lala opened fire that hit the chest of Balla who ran for his life and fell down in front of Ram Niwas's shop and died. Testimony of Babloo gets corroboration from the statements of Murari Lal (Pw.5), Ram Niwas (Pw.6), Virendra (Pw.7) and Gopal (Pw.9). We have closely scanned the cross examination of these witnesses and we find that their testimony could not be shattered. Although learned counsel for the appellant took us through the

contradictions elicited in the cross examinations of the witnesses, in our opinion those contradictions are minor in nature.

5. Appellant Lala @ Rahees himself appeared as defence witness (Dw.2). According to him the deceased Balla was his driver and on September 10, 2001 around 10.30 AM he had gone to different shop keepers to alert them about payment of money. When he came back around 11.45 AM he found dead body of Balla in front of Ram Niwas's shop. Chhinga (Dw.1) informed him that Balla came from Bayana with a bag that contained something. Appellant further stated that he himself took the dead body of Balla to the hospital and when he was taking the dead body to mortuary the police arrested him. In fact he was falsely implicated in the case because of business rivalry. Chhinga (Dw.1), who was serving in the shop of Lala, deposed that on the date of incident Balla was driver on Tata 407 owned by Lala. Balla had gone to Bayana to supply tomatoes and came back around 10.30 AM. He asked about Lala and sat in front of Murari's shop. Balla was having a bag that contained revolver, while Balla was holding the revolver it triggered off and hit his chest.

6. The defence version does not appear to us creditworthy. The revolver .32 bore used in commission of offence got seized lying between tyres from the shop of appellant vide recovery memo (Ex.P-10). It got seized and sealed in packet `A'. Anil Jasoria IO (Pw.21) deposed in the cross examination thus:-

> "नक्शा बनाने के दौरान ही मैंने लाला की दुकान की तलाशी ले ली थी, जब निरीक्षण किया उसी दौरान यह कट्टा मुझे टायरों के बीच रखा हुआ नजर आया।"
> (At the time of drawing site plan, I got the shop of Lala searched. During that search I saw revolver lying in between the

tyres.)

7. A look at the site plan (Ex.P-3) demonstrates that trail of blood was found in front of appellant's shop from mark B-1 to Ax-4.

8. Packet `A' in which revolver .32 bore got sealed, was sent for examination to FSL. Result of analysis made by FSL as per FSL report (Ex.P-30) was as under:-

RESULT OF ANALYSIS

> "(1) One .32 country made revolver (W/1) from packet `A' is a serviceable firearm.
> (2) The examination of the barrel residue indicates that submitted .32 country made revolver (w/1) had been fired. However, the definite time of its last fire could not be ascertained."

9. Learned counsel for the appellant lastly canvassed that the alleged offence did not travel beyond Section 304 Part I IPC since the appellant did not have entertained any previous vengeance towards the deceased and the incident occurred suddenly and finally ended up in the wanton act of shooting. We find ourselves unable to agree with the submission. In our opinion in the facts and circumstances of the case where the appellant had taken undue advantage of situation and acted in a cruel manner, exception IV to Section 300 IPC cannot be invoked.

10. To invoke the provision of Exception 4 to Section 300 IPC two essentials are necessary to be established. Firstly, it must be proved that the culpable homicide was committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel. Secondly, it must be established that the offenders did not take undue advantage or act in a cruel or unusual

manner. In Suresh Chandra Vs. State of U.P. (AIR 2005 SC 3120) their Lordships of the Supreme Court explained the scope of Exception 4 to Section 300 and indicated as under:- (Para 7)

> "Learned counsel for the appellants submits that the incident had happened without any premeditation or prior concert, upon a sudden quarrel and the resultant attack on the victims was unintentional and, therefore, the offence would appropriately fall under Exception 4 punishable under Section 304 Part I or II. We find it difficult to countenance this argument. Though there was absence of premeditation and it was a case of sudden fight, that is not sufficient to bring the offence committed by the accused within the purview of Exception 4. The further requirement of Exception 4 that the offender should not have taken undue advantage or acted in a cruel or unusual manner should be satisfied. The very fact that the accused appellant used the fire arms in the course of a frivolous quarrel triggered off by the sarcastic remarks of Ravindra Singh would demonstrate beyond doubt that the appellants acted in a cruel manner and it would further demonstrate the intention to cause death or at any rate, to cause a bodily injury of the nature mentioned in clause thirdly of Section 300. Such intention is writ large on the acts done by the accused. Thus, it is a case in which clauses I to III of Section 300 IPC are attracted and, as already observed, Exception 4 would not come to the rescue of the appellants for the reason that they have acted in a cruel and unusual manner by shooting at unarmed victims who merely indulged in a verbal duel with them. The fact that the other two accused who were said to have exhorted the three appellants to attack the members of the other party were acquitted has no material bearing on the question whether the appellants could be given the benefit of Exception 4. Thus, the argument in regard to the nature of offence cannot be sustained. On the facts of this case, it is only Section 302 IPC that is attracted."

11. Analysing clause Thirdly of Section 300 IPC, Their Lordships of the Supreme Court in Virsa Singh vs. State of Punjab AIR 1958 SC 465 laid down that prosecution must prove the following facts:-

> "(i) It must establish, quite objectively, that a bodily injury is present.

(ii) The nature of the injury must be proved.
(iii) It must be proved that there was an intention to inflict that particular bodily injury.

Once these three elements are proved to be present, the enquiry proceeds further, and

(iv) it must be proved that the injury of the type described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature.

Once these four elements are established the offence is murder under section 300 `Thirdly'."

12. In the instant case all the four elements are established by the prosecution. In the conclusion we may note that there is overwhelming evidence to establish charges under section 302 IPC and 3/25 Arms Act against the appellant. Viewed from any angle we find no ground to interference with the impugned judgment of learned trial Judge.

13. For these reasons the appeal fails and stand dismissed.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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